

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0684
INDIVIDUAL INCOME TAX
For The Tax Periods: 1995, 1996, 1997
USE TAX
For The Tax Period: 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Income Tax – Residency

Authority: IC 6-3-1-12, IC 6-1.1-20.9-1, 45 IAC 3.1-1-22.

The Taxpayers protests the Department's disallowance of an apportionment of income reported on a non-resident income tax return.

II. Use Tax – Imposition

The Taxpayers protest the imposition of use tax on a motor vehicle.

Authority: IC 6-2.5-3-2.

STATEMENT OF FACTS

Taxpayers were assessed individual income tax after their non-resident status was disallowed. Also, Taxpayers were assessed use tax on an automobile purchased in Indiana. After filing joint-returns in Indiana for several years, Taxpayers moved to Florida and filed non-resident income tax returns (IT-40 PNR) for Indiana. They spend over eight months of the year in Florida and spend four months in Indiana. Taxpayers have provided a Declaration of Domicile for the state of Florida, Florida voter's registration, and receipts showing the payment of amounts originally claimed as a homestead credit in Indiana for property taxes. More facts are provided below as necessary.

I. **Individual Income Tax – Residency**

DISCUSSION

Pursuant to IC 6-3-1-12:

The term “resident” includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

Also, 45 IAC 3.1-1-22 states:

“Domicile” Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person’s intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person’s intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

Here, Taxpayers have provided the Department with a copy of a declaration of domicile for the state of Florida and state that they spend less than 183 days in Indiana. Also, Taxpayers provided a copy of a Florida voter’s registration.

Originally, the Taxpayers received a homestead mortgage exemption. IC 6-1.1-20.9-1 defines “homestead” as an individual’s principal place of residence. However, Taxpayers provided the Department with copies of receipts showing that the amount originally claimed as a credit has been repaid. Consequently, the Taxpayers have provided sufficient evidence showing that they are residents of Florida.

FINDING

The Taxpayer’s protest is sustained.

III. Use Tax – Imposition

DISCUSSION

Taxpayers were assessed use tax on an automobile purchased in Indiana.

Pursuant to IC 6-2.5-3-2:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
 - (1) is acquired in a transaction that is an isolated or occasional sale; and
 - (2) is required to be titled, licensed, or registered by this state for use in Indiana. (emphasis added).

....

Taxpayers are residents of Florida. Although the Taxpayers purchased the automobile in Indiana, they immediately transported it to Florida where it was registered. Consequently, the automobile is not subject to use tax.

FINDING

The Taxpayers’ protest is sustained.